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Frenzel	Marlenee	Rose
Fuqua	Martin (NY)	Roukema
Garcia	Mavroules	Russo
Gephardt	McDade	Savage
Ginn	McDonald	Schulze
Goldwater	McKinney	Schumer
Gradison	Michel	Smith (AL)
Hagedorn	Mitchell (MD)	Smith (IA)
Heftel	Moffett	Smith (NJ)
Horton	Morrison	Solarz
Jones (NC)	Neal	Stangeland
Kemp	Nelson	Stark
Kramer	Obey	Tauke
Lantos	Pashayan	Taylor
Latta	Patterson	Thomas
Leath	Pepper	Volkmer
Lewis	Pritchard	Wampler
Long (MD)	Railsback	Washington
Lott	Rangel	Whitehurst
Lundine	Richmond	Williams (MT)
Madigan	Rinaldo	

□ 1245

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3519, with Mr. SIMON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, June 24, the gentleman from Illinois (Mr. PRICE) had 55 minutes of general debate remaining; the gentleman from Alabama (Mr. DICKINSON) had 52 minutes of general debate remaining; the gentleman from Texas (Mr. BROOKS) had 1 hour of general debate remaining; the gentleman from New York (Mr. HORTON) had 1 hour of general debate remaining; the gentleman from New Jersey (Mr. HUGHES) had 30 minutes of general debate remaining; and the gentleman from New York (Mr. FISH) had 30 minutes of general debate remaining.

The Chair recognizes the gentleman from Illinois (Mr. PRICE):

Mr. PRICE. Mr. Chairman, I yield myself such time as I may require.

Mr. Chairman, I would like to begin by explaining the plans for the remaining portion of general debate.

It is my understanding that I have an hour remaining to me under general debate. It is my intention to yield 15 minutes to the gentleman from Florida (Mr. BENNETT) to explain the committee's position on section 908 of the bill, the so-called posse comitatus provision, to allow for military cooperation with civilian law enforcement officials.

After Mr. BENNETT uses that time, it is then my intention to yield the floor so that the Committee on the Judiciary can use its time allotted under the rule for discussion of the posse comitatus issue and its proposed amendment to the committee's section 908. I believe the Judiciary Committee concurs in this procedure.

The rule provides an hour to the Committee on the Judiciary. It is my understanding that the committee does not intend to use all of that time.

After the Committee on the Judiciary has consumed or yielded back all

of its time, it is my intention to yield 15 minutes to the gentleman from Virginia (Mr. DAN DANIEL) to explain the position of the Armed Services Committee regarding section 909 of our bill, the provision relating to the question of multiyear procurement by the Department of Defense.

After Mr. DANIEL gives that explanation, it is my intention then to yield the floor to the Committee on Government Operations to use its time under the rule to discuss its proposed amendments, which relate in large measure to the question of procurement policy.

After the Committee on Government Operations has consumed its time, I shall use the last half hour of time allotted to me to close the debate on behalf of the Armed Services Committee. I shall recognize during that half hour members of the committee to discuss only the issue of multiyear procurement, and I shall retain the final 5 minutes of that time for my own concluding remarks on the subject.

I wanted to explain these plans so that members will understand that there is no time remaining during general debate to discuss issues other than sections 908 and 909 of the bill. It was for these purposes that I reserved the balance of my time during the earlier portion of general debate.

It is my understanding that the ranking minority member of the committee (Mr. DICKINSON) has approximately 50 minutes of time remaining on the other side, and will use his time in approximately the same manner that I will: That is, he will yield a brief portion of his time for discussion of the posse comitatus provision and reserve the balance for discussion of multiyear procurement.

I now yield 15 minutes to the gentleman from Florida (Mr. BENNETT).

□ 1300

(Mr. BENNETT asked and was given permission to revise and extend his remarks.)

Mr. BENNETT. Mr. Chairman, section 908 would authorize cooperation by the Armed Forces with civilian law enforcement officials for certain purposes; to amend title 10 of the United States Code by adding four sections in a new chapter.

To get the bill out before the Members—it is brief, not lengthy—section 371 permits the Secretary of Defense to provide Federal, State, and local law enforcement officials any information collected during the course of military operations that may be relevant to a violation of any Federal or State law. This section does not provide any new authority with respect to gathering information for military purposes. It merely provides for the dissemination of such information to civilian law enforcement officials.

If, for example, during an AWACS training flight, aircraft were identified approaching U.S. international borders, the Air Force could notify U.S.

Customs officials to permit them to attempt to identify the nature and the business of this aircraft or, if a Navy destroyer operating off the Florida coast observes some suspicious looking ships approaching the coast, it could pass this information on to the U.S. Coast Guard.

Section 372, the next section, permits the Secretary of Defense to make available to Federal, State, and local officials equipment, base facilities, research facilities of the Armed Forces if that action will not adversely affect the military preparedness of the United States. This section would provide clear authority for practices which have traditionally been approved by the Departments of Defense and Justice.

In recent years, the military departments have provided assistance to civilian law enforcement officials. For example, the Army has on loan to the U.S. Customs Service over \$5 million worth of equipment, and it loaned armored personnel carriers, helmets, and flak jackets to the Department of Justice personnel who participated in the Wounded Knee incident several years ago.

Section 373 permits the Secretary to assign members of the Armed Forces to train Federal, State, and local law enforcement officials in the operation of military equipment made available by section 372, and to provide expert advice to them. Again, this section clarifies authority for traditional cooperation with civilian law enforcement officials.

For example, the Army Military Police School at Fort McClellan has trained civilians in photographic operations and trained civilian officers in the use of equipment or facilities to them for law enforcement purposes.

Section 374 requires the Secretary of Defense to issue regulations: First, to insure that the provision of assistance, equipment, or facilities does not impair military training or operations necessary to the military preparedness of the United States; and second, to insure reimbursement for the provision of assistance obtained from the Department of Defense when the Secretary determines it is appropriate. The regulations provided by this section will insure that the cooperation with the civilian law enforcement officials does not interfere with carrying out the primary mission of our Armed Forces, that is, military preparedness. The regulation will also insure that the law enforcement cooperation is not done at the expense of defense activities.

The results of the Armed Forces work should not be used at the cost of defense budgets to support the activities of other agencies of Government regardless of how laudable those activities might be. I understand the Department of Defense has always required reimbursement in the past, and

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it will continue to do so under these provisions.

Section 375, which is the most controversial part of this measure, permits the Secretary of Defense upon request from a Federal drug agency—here we are getting down to a more narrow activity now, just a Federal drug agency—to assign Armed Forces members to assist Federal drug enforcement officials in drug seizures and arrests provided: First, such assistance will not adversely affect military preparedness of the United States; second, that the Secretary determines that the drug enforcement operation may not succeed without the existence of military personnel; third, drug officials maintain ultimate control of the operation; and fourth, such assignment shall not occur in any location or circumstance not previously approved by the Secretary of State.

This section would allow drug participation by Armed Services personnel in drug enforcement operations. I should also point out that this direct participation by military personnel is authorized only in drug law enforcement matters, whereas the provision of indirect military support relates to law enforcement generally. This distinction is made because of the critical need for additional resources in enforcement of drug laws. I am pointing out that the early sections of this section 908 are broader than these very narrow ones with regard to drugs.

Heretofore, such direct participation has not been possible because of the Posse Comitatus Act, section 1385, title 18, United States Code. That section prohibits the use of any part of the Army or the Air Force as a posse comitatus or otherwise to execute the law.

Posse comitatus is defined by Webster as the power of a county, the power of a sheriff, to summon the whole body of inhabitants to assist in preserving the public peace or in executing a legal order. This prohibition originated in the Army Appropriations Act of 1878. It was enacted in response to the use of Federal troops to police State elections in former Confederate States where the civil power had been reestablished, and where the Union veterans were enforcing the local law.

The primary concern of the act was the prospect of U.S. Marshals on their own initiative calling up troops to form a posse or to otherwise perform direct law enforcement functions to execute the law. Although it appears applicable only to the Army, the law was amended to include the Air Force when that department was spun off in 1947. Although the act by its terms does not include the Navy or Marine Corps, the Navy has adopted that restriction by self-imposed administrative action.

Clearly, the circumstances of 1878 do not prevail today. Our Nation is faced with a crisis of law enforcement. International drug dealers, because of the tremendous profits of their illicit

business, can afford the finest and the most sophisticated electronic devices which are capable of penetrating our borders and evading law enforcement officials with immunity. Limited budgets prevent local, State, or Federal law enforcement agencies from buying the radar or electronic equipment to locate the smugglers, but much of the necessary equipment and expertise in the operation are found in the Armed Forces.

In order to respond to the challenges of the drug dealers, this Nation must marshal all of its available resources. It can take a large step in that direction by permitting the use of military equipment and personnel in cooperation with civilian law enforcement officials. Some people say, "Why don't you leave this as it is, in the hands of the Coast Guard?"

It would cost approximately \$4 billion to build the Coast Guard ships needed to do the job. If the Coast Guard were to get these ships, after this drug war was over, or greatly made unnecessary, all these billions of dollars worth of ships would no longer be necessary. We would also have to employ many thousands, perhaps as many as 20,000 new Coast Guard personnel.

Section 908 permits the use of the resources of the military departments in the war against drug dealers. This section would permit the use of military equipment and personnel without violating the Federal Government's traditional separation of civilian and military functions. Participation of military personnel could occur only in drug enforcement, and then only with the specific authority of the Secretary of Defense. His approval would depend upon a finding that there would be no adverse effect on military readiness; second, that the drug enforcement operation would not succeed without the participation of military personnel; third, that the Federal drug enforcement officers would maintain ultimate control over the operation, not the military; fourth, that previous approval of the location and circumstances must be given by the Secretary of State.

Those last limitations were placed on because of the concern of some people about the Rio Grande, and that possibly there should be some provision that the Secretary of State should pass on that before anything like that would be done. Those limitations will insure that there would be no indiscriminate use of Armed Forces personnel. They will be called upon when it is apparent that the seizure and arrest would fail but for their participation. In all situations, they will be under the control of civilian Federal drug enforcement officials, thus preserving the historic separation between civilian and military spheres of activity of our Government.

Over the years, Congress has not hesitated to permit direct participation by the military in matters much

less important. On several occasions, the military has been authorized to assist civilian law enforcement officials in areas such as detention of vessels for customs and in the enforcement of the 200-mile limit. The epidemic of illegal drugs is a matter of much graver national concern. It threatens the moral and physical well being of our entire Nation.

Since the posse comitatus law makes any improper military support of civilian law enforcement a Federal felony, military commanders, who must often make a speedy decision with regard to whether they can comply with the request, have understandably been cautious in construing such requests. But any delay can jeopardize important law enforcement operations. It is important, therefore, that the law be as clear as possible in identifying those circumstances in which the military can cooperate lawfully with the civilian law enforcement officers. Accordingly, it is essential that we take this action to amend the law.

The question then, Mr. Chairman, is very simply: Are we willing to make a commitment to stop drug smuggling, or will we wait until those drugs shatter the minds and lives of a generation of our young people? I believe we must act to protect our youth, we must commit all of our resources, including the military.

Now, Mr. Chairman, I made a list of the various places where the posse comitatus law is not applicable by a particular, special act of Congress. Such include arresting trespassers in national parks who can be apprehended and arrested by military personnel; also to protect against crimes against Members of Congress, including any assault on a Member of Congress. Congressmen can call in the military to make such arrests. There are many other things of this type, protecting Indians, Indian lands, civil rights laws, customs officials. As a matter of fact, Congress even passed a law some years ago, that if you establish a right to bird droppings on an island, the military can be called in to make an arrest to protect your property in the bird droppings.

So, certainly if we have these trivial things addressed, things of not nearly the significance of drug smuggling, we certainly should give assistance in the field of drug enforcement.

I want to say to the Members, I am somewhat of an amateur historian, and this posse comitatus thing really sprang out of the fact that the people in the South did not want the Union veterans to be disturbing them in the way they would like to be undisturbed, and they got the power in Congress to pass this law, and they did. What did the real fathers of our country think about such a law? The real fathers of our country, such as George Washington, had no apprehension about leading troops in the western part of Pennsylvania where the people were making moonshine and did not want to

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pay taxes. George Washington himself went out there with military forces in 1794 to see to it that the law was enforced and the taxes paid. So, we are dealing with something which is not dangerous to our country, not dangerous unless we do not do it. We do need very much to have this strengthening of our ability to apprehend drug smugglers who are destroying our society, destroying our youth, destroying our country.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from Michigan.

Mr. CONYERS. What do the States' Righters think about it?

Mr. BENNETT. The gentleman knows a lot more about States' rights than I do. I am not a States' rights advocate at this point.

Mr. CONYERS. Does the gentleman suggest that I know more about States rights than he does?

Mr. BENNETT. The gentleman brought it up, so I think he would.

Mr. CONYERS. I think it ought to be a part of the discussion here. If the gentleman does not know anything about it, I will find out something about it so that we can present it in general debate.

Mr. BENNETT. I did not say I know nothing about it. I just say I am not an authority to speak as a States' Righter.

Mr. BEARD. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from Tennessee.

Mr. BEARD. Mr. Chairman, I feel very strongly about what my colleague from Florida is talking about, and the thrust of that. I do not see what this has to do with States Righters. I think States Righters or whoever are equally concerned that the drug problem in this country has gotten to the point where we are seeing our young people experience an epidemic, and we are all concerned in trying to find a solution to it, so rather than get involved in maybe an issue of States Righters versus this or that, I would rather not see that issue come into being, so I commend the gentleman for his presentation.

Mr. BENNETT. I thank the gentleman.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from Alabama.

Mr. DICKINSON. Mr. Chairman, I would just like to give an example of why I think that it is probably a good thing for us to pass this piece of legislation. As the gentleman well knows, a few years ago an aircraft circled the Municipal Field in New Orleans requesting landing instructions. As it turned out, it was an aircraft that had left Havana, Cuba, coming up to a sugar conference, carrying some 20-odd passengers, flying from Cuba to New Orleans, and were asking for

landing instructions before anybody knew they were in the air.

This ought to give some indication as to the lack of surveillance and the lack of ability for us to detect low-flying aircraft. This aircraft had taken off from Havana, flown under 1,000 feet for over 200 miles.

□ 1315

So nobody even knew it was in the air. If that aircraft can do it, then, of course, other aircraft can with impunity violate our borders and come into the country unobserved and undetected. If we pass this legislation AWACS, as an example, should be able to pass on intelligence that will preclude instances such as this.

Mr. Chairman, I think this is a reasonable exception to the law that we would have built in historically, and I would support it.

Mr. BENNETT. Mr. Chairman, I thank the gentleman from Alabama (Mr. DICKINSON) very much.

I might say that, as I analyzed what was asked about States rights, my reaction to States rights with regard to this bill was that this bill does not create any new crimes. This bill just enforces Federal laws about criminal activities. The first part of it is not dealing just with drugs, because we are dealing with everything; it enforces local law, but it has to be requested by local officials. So I really do not myself see any issue in this with regard to States rights.

The CHAIRMAN. The time of the gentleman from Florida (Mr. BENNETT) has expired.

Mr. DICKINSON. Mr. Chairman, for purposes of debate on this issue only, I yield 5 minutes to the gentleman from California (Ms. FIEDLER).

Ms. FIEDLER. Mr. Chairman, I would like to ask the author of the amendment a question, if I can get his attention for a moment.

Mr. BENNETT. Yes. If the gentleman will yield, I would be happy to respond.

Ms. FIEDLER. Mr. Chairman, I would like to ask this as a point of inquiry.

This morning we received a "Dear Colleague" regarding a very similar amendment by the Committee on the Judiciary. I was very interested in this particular amendment and am strongly in support of the concept. I believe we should use our resources to try to stop the criminal activity that is taking place on or near our borders. I am interested to learn the differences between the two amendments and what you feel your amendment would accomplish versus what might be accomplished by the amendment of the Judiciary Committee, which is similar.

Mr. BENNETT. Mr. Chairman, the two amendments are similar, and I think that they both do a lot of good.

The amendment which I had approved would actually allow the military to become involved by making arrests. They would always be under the

civilian control, but the commanding officer of a ship, for instance, could actually arrest somebody who was running drugs.

The advantage of this amendment is primarily that Coast Guard personnel would not have to be on every military ship. We want this to be a workable operation. To use only Coast Guard in arresting would cost a few million dollars a year—not a lot of money, but it would mean some added expense. We would have to waste a little in the way of having Coast Guard personnel aboard all these ships. That really would be the primary difference. It would be a very workable bill if we placed Coast Guard personnel on every Navy ship, but it would cost more money.

Therefore, the amendment which I introduced, I believe, is a more direct approach. Of course, the drug smugglers might really feel a little bit of contentment with the judiciary committee proposal, knowing that they could not be sure there would be Coast Guard personnel on every military ship. That is something I want to get at. My proposal costs less and does more.

It has been estimated that we can greatly cut this traffic down. Eighty-five percent of the drugs coming into the United States are not stopped, despite the fact that we try. There is no way we can stop them unless we do something like this. If we cut it down to where they are losing about 75 percent of what they are trying to bring in, the analysis is that we will pretty well have a handle on the drug problem, and it will not be economically feasible for them to continue. I think that when we can get a drug smuggler to realize that every military ship can arrest him we will make progress in fighting the drug traffic.

There are 42 Navy ships in my home district which cannot now be used for this purpose at all. There is now only one Coast Guard ship in that area of Florida, the Navy ships could be a great help.

So, Mr. Chairman, I believe it would make it a more practical thing if we were to do this.

Ms. FIEDLER. Mr. Chairman, I appreciate very much the gentleman's explanation, and I wholeheartedly support his amendment, which is offered on behalf of the people of the United States to be able to take the resources of the Federal Government and permit them to be used in such a cooperative fashion so we can help to reduce these very serious crimes which affect the children, as well as the adults, of our Nation.

Mr. BENNETT. Mr. Chairman, I thank the gentleman from California (Ms. FIEDLER) for her comments.

Mr. PRICE. Mr. Chairman, in keeping with our agreement and understanding, I now yield to the Committee on the Judiciary under the rule.

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The CHAIRMAN. Under the rule, the gentleman from New Jersey (Mr. HUGHES) has 30 minutes.

Mr. HUGHES. Mr. Chairman, I yield myself such time as I may consume.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Chairman, today the House has before it legislation which represents an important step forward in our efforts to combat crime in America. Section 908 of the Defense Department authorization bill constitutes an important first step in our efforts toward improving the coordination of all our Federal resources in the fight against crime.

Let me explain this legislation in three steps: First, a brief discussion of the history of the legal limitations on the use of the military to enforce civilian laws; second, a description of the problems which have arisen under existing law; and, finally, the changes proposed in this bill.

It is commonplace that the American colonists gathered along the eastern seaboard in the 18th century resented the use of British troops to enforce what were felt to be oppressive British laws. In fact, the Boston massacre involved the use of troops to enforce a British civil statute. This traditional—and I believe wise—antipathy toward the use of military to directly enforce the civilian laws is reflected in our Constitution. The founders of our country granted the rights of citizens to bear arms and to maintain a militia, prevented the arbitrary quartering of troops, and guarded against the suspension of habeas corpus.

The same principles motivated the Reconstruction Congress to prohibit direct involvement in civilian law enforcement by passing the Posse Comitatus Act. The constitutional provisions I mentioned as well as the Posse Comitatus Act secure the proper place of the military within our free society.

The Posse Comitatus Act, enacted in 1878, provides that the Army may not be used to execute the civilian laws. The Committee on the Judiciary agreed with these important principles. The Posse Comitatus Act as interpreted, however, has become an impediment to some important and indirect types of cooperation between the military and civilian law enforcement.

The reasons for Posse Comitatus causing problems are severalfold. First, the statutory prohibition is of a criminal nature and many military commanders are reluctant to act without clear authority. Second, the few courts which have considered the act have enunciated conflicting views about the limits imposed by the law on military involvement in civilian law enforcement. Third, despite an apparent commitment by the Defense Department to cooperate with civilian law enforcement officials, there has been some reluctance by lower level officials to take any risks.

The bill reported by the Committee on the Judiciary resolves the existing problems with the Posse Comitatus Act. The first three sections of the bill which relate to provisions of military intelligence information, equipment, and training capacity are supported by the Departments of Justice, Defense, Treasury, and the Coast Guard. These sections of the bill represent a clarification of existing administrative practices. These sections do not materially change the Posse Comitatus Act.

The Committee on the Judiciary decided that in addition to clarifying the Posse Comitatus Act, an additional step was necessary. Proposed section 375 provides that once the military has decided to lend equipment to civilian law enforcement authorities, military personnel may be used to operate and maintain the equipment. This section is limited to requests for such assistance made by the head of a Federal drug law enforcement agency and only if the offense involves a violation of a Federal drug statute. We expect this operational assistance to be requested only when the training of civilian law enforcement to operate military equipment is not feasible.

The Committee on the Judiciary considered and rejected a provision which is present in the authorization bill reported by the Armed Services Committee that authorized the use of military personnel in making arrests and seizures of drug offenders. The committee carefully evaluated this proposal. We heard the eloquent testimony of our congressional colleague, CHARLES BENNETT of Florida, on this issue. We are pleased to be able to accept most of his suggestions in this area. We were, however, unable to support his request for granting the military authority to arrest and seize drug violators. We carefully questioned the witnesses from the Department of Justice, the U.S. Customs Services, and the Coast Guard and none of these witnesses saw any need for granting arrest and seizure authority to the military. Moreover, the committee found itself in the position of agreeing with the Defense Department that the Armed Services Committee proposal went too far in involving the military in civilian life. The committee was impressed with the need to assist law enforcement with military equipment and other assistance, but a case was not made for arrest and seizure authority.

In conclusion, Mr. Chairman, I believe that the Committee on the Judiciary has carefully drafted a bill which materially assists law enforcement while at the same time preserving the tradition of separating the military from direct hands-on authority in civilian law enforcement activity. I, therefore, urge my colleagues to vote for the measure which received the strong support of the members of the Committee on the Judiciary.

The CHAIRMAN. The gentleman from New Jersey (Mr. HUGHES) has consumed 5 minutes.

The Chair recognizes the gentleman from Michigan (Mr. SAWYER).

Mr. SAWYER. Mr. Chairman, I yield myself 5 minutes.

(Mr. SAWYER asked and was given permission to revise and extend his remarks.)

Mr. SAWYER. Mr. Chairman, I may say, just to clear this up, since I started out from ground zero on this, never having heard the expression, "posse comitatus," that the fact is that I told the Rules Committee that it still embarrasses me as something of my lack of knowledge, although I had practiced law, and I may say for those who are confused by the term that all it means in Latin is "posse"—like we use the term, "a sheriff's posse." It means "force of the county."

Now, in the sense the term is being used here, it is different in that it is being used in the sense that the military cannot be used as part of the sheriff's posse or the force of the county for civilian law enforcement.

So there is nothing magic about the term. It is just the term that we normally refer to in its simplistic way as a "posse."

The doctrine of posse comitatus has developed a special meaning of not involving the military as it has been carried on and as it was enacted in the statute. And, unfortunately, in many ways, the criminal statute is putting a criminal penalty on anybody in the military or anybody else who authorizes the use of military force in connection with civilian law enforcement. This has been carried to great extremes, because of the lack of clarity of what is involved, to the point that many times military commanders have refused to provide even intelligence information or information on the movement of a ship known to be carrying contraband and other items for fear they might be involved in a criminal offense under the posse comitatus statute.

This is really the reason the gentleman from Florida (Mr. BENNETT) initially brought this subject up, to try and clarify this matter and bring all the forces we have to bear on what has become one of the great national problems, namely, a \$64 billion yearly traffic in drugs. It is bigger than any other industry in the United States, dominating the State of the gentleman from Florida (Mr. BENNETT) to the point where it even now exceeds the tourist industry in that State, going to some \$7 billion a year.

Yet we have equipment, personnel, and expertise sitting by that we are fearful of using for fear of violating this imminent and yet post-Civil-War statute. That is the clarification.

The only difference between the proposal of the gentleman from Florida (Mr. BENNETT) and the proposal of the Judiciary Committee is that he

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would allow the direct participation or assistance of military personnel in the actual arrest or seizure, whereas the bill of the Judiciary Committee's would allow the use of equipment provided by the military and use of its personnel to operate it, since obviously it takes expertise to work the equipment, but it would not allow their actual participation in the seizure or arrest. The basic reason for that difference is that it was felt by the Judiciary Committee that military personnel are not trained in the niceties of civil law enforcement.

They are not aware of the various rules requiring the giving of rights to defendants when they are arrested, and that may work out to be self-defeating by failure to give the appropriate warnings, and so forth, on rights and against self-incrimination and result in the acquittal of defendants and put the military in a field of expertise in which they are not trained. Neither the military nor the Justice Department felt this was necessary.

□ 1330

Therefore, we took that extra power of participating actively in arrest and seizure out, but in essence maintain all the other rights, the right to use equipment, the right to provide information, the right to provide personnel to man and maintain the equipment, but to have actual law enforcement people, including the Coast Guard, do the actual arresting and seizing.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

I wonder what would be the result in court if a military personnel did under your provision, the provision that you advocate, make an arrest for lack of information about the law or because of the exigencies of the circumstances, did go ahead and lay hands on and create the status of arrest, then what would the posture of the case be when it reached court?

Mr. SAWYER. I suppose it would come under—I am just speculating on this, too—but I suppose it would come under the existing posse comitatus statute which has not yet been repealed and is not proposed to be repealed, and he would then be subject to the proof of a mens rea or guilty intent in light of what was going on, to be or not to be subject to a criminal penalty.

I cannot believe he would be, but he could be.

Mr. HUGHES. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. DANIELSON).

(Mr. DANIELSON asked and was given permission to revise and extend his remarks.)

Mr. DANIELSON. Mr. Chairman, I am entirely in support of the amendment offered by the gentleman from New Jersey. I share with the gentle-

man from Michigan his concern over using such a cumbersome term as "posse comitatus," so I took the liberty of looking it up in Webster's Unabridged Third International Dictionary over on the table. What it means is:

The power of the county; a: the entire body of inhabitants who may be summoned by the sheriff to assist in preserving the public peace (as in a riot) or in executing a legal precept that is forcibly opposed including under the common law every male inhabitant who is above 15 years of age and not infirm.

Mr. CONYERS. Mr. Chairman, would the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding.

Can the gentleman explain to some of the slower Members in the Chamber what that has to do with the present amendment?

Mr. DANIELSON. Yes; we should not use the Army as a posse comitatus. That is the purpose of the amendment.

Mr. SAWYER. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. McCLODY), the ranking minority member of the committee.

(Mr. McCLODY asked and was given permission to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Chairman, will the gentleman yield?

Mr. McCLODY. I yield to the gentleman from California.

Mr. DORNAN of California. Mr. Chairman, what strikes me most strongly about the debate over military cooperation with civilian law enforcement authorities in the enforcement of narcotics laws is the general agreement among nearly all Members that this cooperation must be enhanced. We need more effective enforcement of our drug laws, especially those aimed at illegal transportation of controlled substances across our borders.

The two versions of section 908 now before us reflect this general agreement. The versions offered by the Armed Services Committee and the Judiciary Committee are nearly identical, and contain mostly technical and stylistic differences. Until we come to the fifth part of these versions, the section concerned with "military personnel assistance," we find most Members satisfied with the language offered by either committee.

Our debate centers around what type of assistance military personnel should properly offer civilian law enforcement officials. The Armed Services Committee's version would allow members of the armed services to make arrests and seizures. The Judiciary Committee's version, while permitting military personnel to offer assistance in many crucial areas, would not permit them to make arrests and seizures.

I have serious reservations about permitting military personnel to detain American citizens, or to seize property believed stolen or illicit. The Armed Services Committee's language would mark a significant departure from long years of practice under the Posse Comitatus Act. Now, military personnel can be used in a riot situation, if they are called for by the President. I am reluctant to approve of the injection of military personnel into confrontational situations with American citizens in criminal investigations.

Military personnel are not fully trained in techniques of physically detaining criminals. More importantly, their ignorance of laws governing the proper conduct of searches and seizures might inadvertently present the basis for a legal challenge to Government prosecution. An improper action by military personnel during an arrest might enable a drug smuggler to be freed on a technical, unnecessary point of law.

The Judiciary Committee's version of section 908 goes further than the Senate language in this matter. It permits military personnel to operate and maintain, and assist in the operation and maintenance of, military equipment best cared for by experts. It enhances cooperation between civilian law enforcement agencies and the military. It specifically stipulates that military personnel be allowed to provide such assistance only in enforcement of the Controlled Substance Act, or the Controlled Substance Import Act.

We need better enforcement of our drug laws. The terrible drug epidemic in our country begins with ruthless, heartless, profiteering criminals who have been able to flaunt our efforts to end their cruel trade. We must also preserve the traditional American concern for the operation of the Armed Forces in civilian affairs. I believe that the language offered by the Judiciary Committee best preserves this delicate balance.

Mr. McCLODY. Mr. Chairman, first of all, I want to commend the gentleman from Michigan (Mr. SAWYER), likewise the gentleman from New Jersey (Mr. HUGHES), for their very clear articulation of the posse comitatus provisions in this bill which the Committee on the Judiciary gave very thoughtful study to.

I might say that in addition to the elaborate explanation which was given by my colleague from Michigan, I think we should recall also a tradition in our country of a demand for a separation of the civilian authority from the military authority. In the consideration of the Department of Defense authorization bill we want to be very wary of compromising that tradition in any way while at the same time we want to utilize to the maximum possible the existing facilities, personnel, and authority which the various ele-

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ments of the military have which can help us, particularly in the drive against drug traffickers.

Mr. Chairman, I rise in support of the provision in the bill as recommended by the Committee on the Judiciary and there should be no dispute in this body about the need for legislative action in order to promote cooperation between the military and civilian law enforcement authorities, particularly in the areas of greatest need, drug trafficking, smuggling and illegal immigration. This Posse Comitatus Act, which was enacted during the period of reconstruction to meet the unique problems of that time, has been a source of confusion about what sorts of assistance and military support may be provided to the civilian law enforcement authorities.

Commonsense tells us that there should be no impediment to the military sharing intelligence about criminal activity that they gather in the routine course of military operations. Furthermore, they should be able to share equipment and base facilities and provide training where it does not interfere with their primary mission, the defense of the United States.

Yet the criminal penalties provided in the act and the prospect that it might be used as a technicality for excluding evidence in a criminal trial which has been alluded to here a few moments ago, should not in any way limit their cooperation.

I believe we should carefully delineate the limits of military intervention in civilian law enforcement and that is precisely what the Committee on the Judiciary has undertaken to do. We do not want the military having a hands-on arrest of persons who are suspected of any of these offenses in which this new provision in the law would be directed and utilized.

On the other hand, if we are going to make an offer of equipment, a viable one, we must include some authority which would permit the operation and maintenance of the equipment by military personnel, which this would do.

I agree with my colleagues from both sides of the Committee on Armed Services and the Committee on the Judiciary who have been urging a prompt and strong response to the problem of drug trafficking and I think we are responding to that effectively through this provision as the amendment to the Committee on the Judiciary proposes.

So I hope that there can be general agreement on this. I think we can get maximum support from the military in these areas where we are trying to get it without running the risk of jeopardizing trials or without in any way violating the distinction, the separation of military from civilian authority, which we have respected traditionally in our country.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Alabama.

Mr. DICKINSON. I thank the gentleman for yielding.

I am not sure that I understand the scope of what we are doing here. It was my understanding that this was directed at drug enforcement.

Mr. McCLORY. All that the Committee on the Judiciary is suggesting in the amendment is that the military do not participate in actual arrests or in actual seizures.

Mr. DICKINSON. I understood that.

Mr. McCLORY. Those were to be deferred to the civilian law enforcement.

Mr. DICKINSON. I understood that. Is it the gentleman's understanding of the amendment that will be offered that it will be broad enough to assist in illegal immigration, also?

Mr. McCLORY. I would think so, in any appropriate law enforcement capacity. I do not think it is limited in the words of the amendment to the drug enforcement.

Mr. SAWYER. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Michigan.

Mr. SAWYER. The only point which is limited to drug enforcement is the point of the use of equipment and participation in the operation of it by the military personnel. In all other areas it applies to law enforcement generally.

Mr. McCLORY. I thank the gentleman for that clarification.

Mr. HUGHES. Mr. Chairman, I yield 7 minutes to the gentleman from Texas (Mr. WHITE).

(Mr. WHITE asked and was given permission to revise and extend his remarks.)

Mr. WHITE. Mr. Chairman, I join in the purpose of the gentleman from Florida (Mr. BENNETT) to help stamp out violations of the Controlled Substances Act and Controlled Substances Import and Export Act to help wipe out the scourge of illicit narcotics.

In trying to do so, we must not do harm to the enforcement effort of our defenses. The amendment which I placed on the Speaker's desk and the one that I have worked out with the Judiciary Subcommittee chairman and it is my understanding that the minority side has worked out too, and with the legislative counsel, will help fight narcotics and not hurt defenses or other efforts.

This amendment I will read in part: The Secretary of Defense, upon request . . . to enforce the Controlled Substances Act or the Controlled Substances Import and Export Act may assign personnel of the Department of Defense to operate and maintain or assist in operating and maintaining equipment made available under Section 372 . . . with respect to any violation of either such Act.

No equipment . . . may be operated in the land area of the United States . . . except . . . for monitoring and communicating the movement of air and sea traffic, or is entering or leaving the land area of the United States, or any pos-

session or territory of the United States incidental to a mission assigned to be accomplished only outside such area.

I skipped a few lines, but that is in essence what it does.

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So in effect, defense personnel could track, monitor and communicate the movement of air and sea traffic with defense equipment, such as ships, planes, radar, and other surveillance equipment and could be used in hot pursuit thereof.

The ships and aircraft could transport enforcement personnel, who would make any searches and seizures.

The difference between this approach and that of the approach of the gentleman from Florida (Mr. BENNETT) is that the gentleman from Florida (Mr. BENNETT) would allow use only of military personnel, but not civilian personnel in the Defense Department, because the gentleman's amendment reads, "May assign members of the Army and Navy, Air Force and Marine Corps," and would only allow military personnel, but not civilian personnel.

It would allow military to search and seize anywhere in this country, which is a misuse, I say, of our military personnel.

It would allow these military personnel, whether in uniform or not, to make searches and seizures.

Now, this use of military personnel is a universal departure in narcotics search and seizure and will be detrimental to the best interests of our defense and narcotics control.

It makes possible the use of untrained military personnel to engage in the dangerous acts of searches and seizures.

It is possible that they will not have the special training in law enforcement, which will mean some of them will be killed. Lawsuits will arise needlessly which would not happen as much with professional law officers, and convictions could become more difficult, as has already been said, with untrained apprehenders.

They may not have language skills, which could endanger their lives in a close situation on the border. I live on the border and I know over the years historically what has happened on the border in law enforcement and how dangerous it can be.

My amendment would preclude border incidents, but the language of the gentleman from Florida (Mr. BENNETT) will expose military personnel directly in international incidents.

The mere presence of uniformed troops on an unguarded border, traditionally unguarded, will raise severe international protests.

Shots will be fired, and if fired by uniformed troops, a terrible incident will arise.

Our manning numbers are based on our military needs, not on law enforcement needs, so we would have to be

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changing our manning needs. We are having a difficult enough time filling our ranks of the military.

A budget searching administration might use troops and cut back customs and border patrol tables with an erosion of surveillance and narcotics control. In other words, you may have less control than you would have before.

Therefore, rather than get more control with the language of the gentleman from Florida (Mr. BENNETT), as I said, we could get less. We could get less defense and more needless casualties in the military and some severe international embarrassment.

The language of the amendment I have presented to the desk and will introduce as we go forward in the amending process to the amendment of the gentleman from Florida (Mr. BENNETT) will allow the Defense Department to do what it can do best in operating its equipment, ships, planes, and surveillance equipment to track, monitor, and communicate the movements of suspected violators, for the professionals trained to search, seize and apprehend, without the bad results I outlined, without casualties to the military, the drain on our military purpose, the lawsuits and the international incidents.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. WHITE. Yes, I yield to the gentleman from Michigan.

Mr. CONYERS. I appreciate the gentleman's description between the two versions that are up for our consideration tomorrow. Under the Judiciary-submitted version which the gentleman has indicated his support for, apparently the military where they are involved in posse comitatus would not be able to effect arrests.

Mr. WHITE. Under the version that the Judiciary and I have worked out as compromise language, they could not effectuate arrests and should not effectuate arrests.

Mr. CONYERS. So if they come across the possession of drugs or violations of the Federal code, they would not be able to arrest.

Mr. WHITE. Any time troops are used in this manner at a request through the Secretary of Defense, they would be accompanied, obviously, with law enforcement officers or whatever agency is involved; so they would be available to make whatever arrests were needed. These troops should be used to operate equipment, to monitor, and survey and not to go in and try to apprehend, because as has been said, with military personnel arresting we will not get as many convictions and will experience casualties and have other kinds of problems.

Mr. CONYERS. Well, the gentleman is making more sense than a lot of the discussion I have heard previously about it.

Now, who would these Federal arresting authorities be, for example?

Mr. WHITE. Well, it could be the DEA on narcotics. It could be the Customs

Service, whoever it happened to be. Sometimes, as the gentleman well knows, the border patrol sometimes helps Customs; but it would probably be Customs and DEA principally.

Mr. CONYERS. So this amendment, in other words, is facilitating military equipment to effect drug arrests?

Mr. WHITE. This is what the drug enforcement officers now lack the most, the equipment and the surveillance and sometimes the trained operators to use that equipment. That is what we are trying to provide.

The gentleman from Florida (Mr. BENNETT) is correct in trying to use the facilities; but I say the gentleman is not correct in exposing troops to dangers and exposing troops to conditions which will lead to less arrests and less convictions.

Mr. HUGHES. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. ZEPERETTI).

(Mr. ZEPERETTI asked and was given permission to revise and extend his remarks.)

Mr. ZEPERETTI. Mr. Chairman, I rise to address one of the most serious problems threatening the security of our Nation and the health and well-being of our citizens—drug trafficking. Drug trafficking in the United States today has become a \$60 to \$70 billion a year illicit industry. The massive trade in narcotics and other dangerous substances undermines legitimate enterprise, contributes substantially to the increased crime and violence gripping our country and brings misery and suffering to millions of Americans caught in the web of drug addiction and abuse.

Against this background, I commend our colleague, the gentleman from Florida (Mr. BENNETT), for his strong efforts to include in this legislation much needed authority for the military to assist civilian enforcement of our drug laws. As chairman of the Select Committee on Narcotics Abuse and Control, I am all too aware that resources available to our civilian law enforcement agencies are simply inadequate to stem the flood of illicit drugs inundating our country. Time and time again, Federal, State, and local law enforcement officials have testified before our committee that they lack the resources to make an appreciable impact on the multibillion dollar drug trade. The profits generated by drug smuggling are so enormous that traffickers can buy the latest boats, aircraft, electronic devices, and weapons. They are often better equipped than the civilian law enforcement agencies that must try to stop them.

Nowhere is this problem more severe than in the gentleman's State of Florida. Because of its long coast line and proximity to South American drug sources, Florida has become a favorite target for drug smugglers and the gateway for most of the marijuana and cocaine entering the United States.

The legislation proposed by the gentleman, however, offers the House the opportunity to help our law enforcement officials even the odds against narcotics traffickers. I sincerely appreciate the gentleman's efforts in bringing this issue to the forefront of attention in the House. The provisions in the gentleman's proposal for military assistance to civilian law enforcement officials in the form of information collected during the normal course of military operations, use of military equipment and facilities, training and technical advice will address the imbalance these officials currently face and provide them help in the areas where they need it most. Many of the law enforcement witnesses who appeared before our committee have testified that their interdiction efforts could be enhanced significantly if the military services could provide indirect support such as equipment and information on the location and movement of suspected trafficking vessels and aircraft.

The military currently provides some assistance in these areas to civilian law enforcement officials on a case-by-case basis. Efforts to improve such cooperation have been impeded, however, by the Posse Comitatus Act which prohibits the use of the military to enforce the civil laws. Unclear court interpretations of that act have made military commanders reluctant to assist civilian law enforcement officials even when such aid would be permissible. The provisions of the Bennett amendment that I have discussed would not change existing law but would remove the uncertainties that have hindered military support for drug enforcement efforts in the past. This legislative clarification of congressional intent would encourage increased military assistance for drug law enforcement, provided that such aid does not impair the military preparedness of the United States.

Despite the much needed clarification that the gentleman's amendment would provide, I cannot support the additional authority it includes for members of the Armed Forces to assist Federal drug enforcement officials in drug seizures and arrests. This authority represents a clear departure from the fundamental principle embodied in the Posse Comitatus Act that military force should not be used to enforce the laws against civilians. Such authority, even with the restrictions on its use contained in the bill, should not be granted absent a clear showing that it is required by extraordinary circumstances. None of the testimony received by our committee, however, indicates that law enforcement personnel feel this authority is needed. To the contrary, many civilian law enforcement officials have expressed the view that authority for the military to assist in drug seizures and arrests could jeopardize convictions because military personnel lack experience in

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the constitutional requirements of civil law enforcement and the proper handling of evidence.

For these reasons, I endorse the amendment recommended by the Judiciary Committee with the perfecting amendment to be offered by the gentleman from Texas (Mr. WHITE). This proposal also permits the military to provide intelligence, equipment, training, and technical advice to civilian law enforcement authorities provided military preparedness is not adversely affected. It specifically prohibits, however, the direct participation of military personnel in searches, arrests, seizures or other similar activities, unless otherwise authorized by law. Rather, the proposal authorizes military personnel to operate and maintain equipment made available to Federal civilian drug law enforcement officials, provided the operation of such equipment occurs outside the United States. This geographical restriction would not apply in certain limited circumstances. For example, military personnel could operate equipment used to monitor and communicate movements of air and sea traffic, even if such equipment is located in the United States.

I believe the alternative proposed by the Judiciary Committee, with the amendment to be offered by the gentleman from Texas (Mr. WHITE), represents a better approach than the Armed Services Committee provision. The alternative authorizes assistance where it is genuinely needed by drug enforcement agencies—the operation of radar and related equipment—while maintaining careful limits on the involvement of military personnel in civilian law enforcement operations. I urge the House to approve his alternative so that the resources of the military can be brought to bear in fighting the critical problem of drug trafficking.

Mr. CONYERS. Mr. Chairman, will the gentleman yield at that point?

Mr. ZEFERETTI. Yes, I will.

Mr. CONYERS. I appreciate the gentleman's concern about the subject of narcotics and I know the gentleman has done a great deal of work on it.

Has it occurred to the gentleman that we might put more money into DEA's budget, rather than dragoon the entire national defense network into this kind of operation? I mean, to put it mildly, this seems to be a little bit backward in terms of approaching the problem. We want to loan them some equipment, but we do not want to give them the right to arrest, for which I am very grateful; but we now have a dilemma. Why do we not just give the DEA the equipment they need and let it go at that?

Mr. ZEFERETTI. I agree with the gentleman that the appropriation should be met for DEA to do a more effective job, along with the Customs division and along with the Coast Guard division; but this is just an auxiliary effort beyond that point.

Mr. CONYERS. Well, wait a minute. We cut the DEA's budget.

Mr. ZEFERETTI. Let me finish my statement. To bring into focus the kind of equipment necessary for these very agencies to do an effective job—if, in fact, we have the type of radar surveillance, the type of technical equipment that could bring a better kind of effort into this whole area—then we should use every effort, whether it be just appropriating dollars to do it, or whether we should have the equipment that is already in place in our coastal areas to provide that kind of assistance to local law enforcement agencies.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. ZEFERETTI. I yield to the gentleman from New Jersey.

Mr. HUGHES. I thank the gentleman for yielding.

The gentleman is absolutely right. As a matter of fact, as my colleague I am sure knows, we did add back \$3.2 million to the drug enforcement budget, as my colleague knows, in the area of task force operations and drug diversion, that is the diversion of licit drugs into the illegal market and for training purposes. Even though in my judgment that is not enough, but in these austere times it certainly was a major effort to put money back into the budget for drug enforcement; but the fact remains that we need to use whatever tools are reasonably available, posse comitatus or a modification of it as we propose as a reasonable tool and still maintain that delicate balance, as the gentleman has well said, between the military role and the civilian role in law enforcement.

Mr. ZEFERETTI. I think a very, very important fact here is that these things are already in place. The use of the kind of technical equipment that could aid in our effort to combat drugs is one that we should use.

The CHAIRMAN. The time of the gentleman from New York (Mr. ZEFERETTI) has expired.

Mr. HUGHES. Mr. Chairman, I yield 1 additional minute to the gentleman from New York.

Mr. ZEFERETTI. Mr. Chairman, I would just like to briefly yield to the ranking member of the Select Committee on Drugs, the gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. Mr. Chairman, I thank the chairman of the Select Narcotics Committee for yielding.

The point that I wanted to make has I think been made by the gentleman in the well.

The gentleman from Michigan raises a very good point and that is that we in addition to doing what we are doing by this legislation, which I think is enormously important and vital, we clearly in the past in the U.S. Congress and in the executive branch under either a Democratic or Republican President, we have not recognized how poorly equipped particularly our drug fighters have been.

By doing what the gentleman suggests and by adopting this amendment, or either by supporting the Armed Services Committee, in any event, whichever one we adopt, the amendment we are recommending, we are going to help enormously by providing some very sophisticated intelligence equipment that frankly for the DEA to duplicate would be virtually impossible. We could not afford it.

Mr. SAWYER. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. RAILSBACK).

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Chairman, I want to begin by commending the gentleman from Florida (Mr. BENNETT), who I think has served us all well by his efforts to provide military assistance to a rather beleaguered law enforcement agency; however, I do feel that as well motivated and as well meaning as the section that the gentleman provided in the armed services bill is, I feel that the amendment that will be offered, as I understand it, by the gentleman from Texas (Mr. WHITE), which is strongly supported by the Judiciary Committee, is a little bit preferable.

I feel that way because there traditionally has been a distinction or a separation between military and civilian spheres of activity. I happen to be the ranking minority member on the Select Committee on Narcotics Abuse and Control. I have had a chance to participate in many hearings in which law enforcement witnesses have testified that their drug interdiction efforts along our borders would be greatly enhanced if the military could provide indirect assistance, such as information on the location and movement of vessels and aircraft used by drug traffickers.

As the chairman of the Committee on Narcotics said, the availability of the illicit drugs in our society has reached epidemic proportions. Our drug law enforcement agencies are simply incapable of stopping the flow of drugs with their very limited resources to purchase, among other things, radar or tracking devices or other sophisticated electronic equipment.

I give the Armed Forces Committee a great deal of credit for recognizing that maybe one of the most constructive things we could do this session in doing something about this monumental problem of drug abuse is to provide some much needed intelligence equipment, sophisticated tracking devices, to let our law enforcement people, like it could be the Coast Guard, it could be the Drug Enforcement Administration, it could be the Customs people, any of them that are involved; now I understand that even the FBI is going to become involved in the drug fighting effort; but in my opinion we would be well advised to adopt this amend-

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ment which really carries forward with the thrust of what the Armed Services Committee was attempting to do, that is to provide this much needed assistance.

I would urge my colleagues to vote for the amendment that will be offered by the gentleman from Texas; at the same time, as I have said, I do thank and commend the Committee on Armed Services for the work they have done.

Mr. HUGHES. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia (Mr. EVANS).

(Mr. EVANS of Georgia asked and was given permission to revise and extend his remarks.)

Mr. EVANS of Georgia. Mr. Chairman, the proposals before us are proposals that I have been working on for the past couple years in hearings and this year on February 24 when I introduced the original posse comitatus legislation, H.R. 1808.

I am here supporting the Hughes version, to be amended by the White version of this legislation, primarily because in my statement to my colleagues I made the statement that I want to make it perfectly clear that the bill would not permit the armed services to become directly involved in civilian law enforcement activities, such as narcotics seizures or arrests.

I am pleased at the type of interest that this legislation is now invoking on the membership. The concept that I support is one that encourages and allows the taxpayers of this Nation to know that the Federal Government is making the most of their hard-earned money through already available resources in dealing with the drug trafficking problem.

The posse comitatus bill will simply allow for the healthy sharing of equipment, personnel, information, and expertise in the effort to prevent illegal drugs from readily flowing into this country.

As a member of the Select Committee on Narcotics Abuse and Control for the past 4 years, I have become increasingly aware that we are not using our available resources. I chaired hearings on drug trafficking in the State of Georgia where we heard unanimously from all law enforcement officials that an amendment to this law would be the single most important piece of legislation that we in Congress could enact in assisting them in their drug enforcement efforts.

Smugglers have highly sophisticated equipment and unlimited funds with which to avoid falling into the hands of the law. We cannot afford to match the kind of money that they have available to them. They have the latest equipment, the latest and fastest boats, aircraft, and weapons. We simply must be able to utilize some of the surveillance equipment from our military which has been bought and paid for by the taxpayers of this country in order to compete. The use of radar equipment along the territorial

waters of the United States is imperative.

I assure all my colleagues that there is tremendous interest in this legislation nationwide. Many organizations have endorsed this concept. Law enforcement officials support it. The Department of Defense supports it. The Department of Justice and the thousands of people across the country that have formed what we have come to term "parents groups for drug-free youth" want it.

I urge you to vote for this version of this legislation.

The CHAIRMAN. The time of the gentleman from Georgia (Mr. EVANS) has expired.

Mr. HUGHES. Mr. Chairman, I yield 30 additional seconds to the gentleman from Georgia.

Will the gentleman yield to me?

Mr. EVANS of Georgia. Yes, I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, I just want to take a few seconds to commend the gentleman from Georgia. The gentleman has been a leader in this whole area now for a number of years. I know the gentleman has been particularly interested in the problems that have been created in the field by the posse comitatus law and I congratulate the gentleman for all the work that has been done. We appreciate the gentleman's support.

Mr. EVANS of Georgia. I thank the gentleman.

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Mr. SAWYER. Mr. Chairman, I yield 3 minutes to the gentleman from Arkansas (Mr. BETHUNE).

(Mr. BETHUNE asked and was given permission to revise and extend his remarks.)

Mr. BETHUNE. Mr. Chairman, I am not a member of either of these subcommittees. I just happened onto the floor and heard part of the debate today. I was interested in the issue because, as many of you know, I spent 4 years as a special agent of the FBI. I have been a prosecuting attorney. I have some experience in the criminal process in this country so I was naturally intrigued by the debate.

As I understand it, the chairman of the subcommittee offers a proposition which would permit the use of military personnel even to include arrest and search and seizure. Is that correct?

Mr. BENNETT. Mr. Chairman, will the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from Florida.

Mr. BENNETT. I thank the gentleman for yielding. I am chairman of a subcommittee but not on drug enforcement. My amendment would allow the use of military personnel even in seizure.

Mr. BETHUNE. Whereas the competing proposition would not permit the military personnel to be used in the instance of search and seizure or in the instance of arrest but would

permit them to be used upon request for the operation of the equipment or for other purposes, I assume.

Mr. HUGHES. Will the gentleman yield to me?

Mr. BETHUNE. I yield to the gentleman from New Jersey.

Mr. HUGHES. I thank the gentleman for yielding. That is correct.

Mr. SAWYER. Will the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from Michigan.

Mr. SAWYER. That is correct. It is the essential difference between the two.

Mr. BETHUNE. I have a series of questions, and it will just take a couple of minutes to roll them out and frame the issue of the concern I have. Perhaps then those of you who worked closely on it could just give some answers to the concerns of an objective bystander. That is, how much assistance can be requested? Who decides how much assistance can be given to civilian authorities? Who decides the parameters of that? What equipment? The priority that will be assigned to the investigation? Then the important question I have is, How are you going to separate this—and I say this as a former investigator who has been out there in the heat of an arrest or investigation. How do you, as a practical matter, separate these functions so that somebody can do just about everything that might be necessary but he cannot search or seize, and he cannot make an arrest, but he can be as close to the investigation in all other respects as one can be? I know it is very difficult to separate those functions.

Let me just finish this point, and then I would like to have an answer. One thing that we do in the process of trying to analyze an issue that involves the criminal justice system is ask ourselves what is our ultimate objective, and it is helpful to think about these issues clearly to set up a couple of models.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SAWYER. I yield 1 additional minute to the gentleman from Arkansas (Mr. BETHUNE).

Mr. BETHUNE. I thank the gentleman. At one far extreme we would say that our goal is to control crime. Others might say, no, our absolute objective is to afford due process. We always as we try to reach for one another I think try to come down somewhere in the middle as we weigh these respective interests. I think it is important that we do that here. But if our goal is to control crime, I would argue then we ought to get on with it, and we ought to allocate as much of the military as we need to this particular endeavor. So in that instance the chairman's amendment, it seems to me, is the more correct amendment because that is what we are trying to do, is it not in fact, to stop drug traf-

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fic? But on the other hand, if we are concerned about some other issues, then maybe we ought to back down a notch or two. I would just ask this question: If we are going to make any move whatsoever in this regard, then we need to ask ourselves what we are doing with respect to the parameters of the authority that will be granted, because for 100 years or more we have had this rule of law, and to throw it away very quickly it seems to me would be a little reckless.

The CHAIRMAN. The time of the gentleman from Arkansas (Mr. BETHUNE) has expired.

Mr. HUGHES. I would yield 2 minutes to the gentleman so I may try to respond.

If the gentleman will yield, I just want to compliment him for being a bystander. He has certainly grasped the nub of the concerns we have had in the Committee on the Judiciary. Incidentally, our committee is the only committee that had any hearings and took any testimony. Frankly, we came down thusly: We believe the posse comitatus law has served this country well over the years and that as we modify it, we should do it very carefully and only as the public interest requires. That seems to be the approach of the Department of Justice and, I might say, the Department of Defense, which does not support the approach of giving the military the authority to arrest and seize if a law enforcement agency sought the authority. They have the manpower to make arrests and seizure. They are fearful they are not trained, and, if anything, it could be counterproductive. Who determines priorities? The Secretary of Defense does.

Very specifically, in the bill the Secretary of Defense makes the decision.

Mr. BETHUNE. My question is could he turn out the whole Atlantic Fleet? A division in the State of Florida? The Marines? What are the limits? Is that written into the bill?

Mr. HUGHES. The Secretary of Defense makes the decision. He has to decide, first of all, whether it would be inconsistent with the primary mission, the military mission. Second of all, the first three sections of the bill in effect are just a codification of existing practice: The sharing of intelligence information, the sharing of equipment, base facilities for staging, the sharing of research. All that is just a codification. The only section that represents a departure is section 375 dealing with equipment. It does not make sense to provide use under 375 and not provide an operator for a sophisticated piece of equipment.

Section 375 is crafted so that it only takes care of existing need. The only need is for the law enforcement agencies dealing with drug operations from time to time to borrow equipment and have the manpower to operate that equipment. We have minimized the exposure of the military to an arrest or confrontation situation to those in-

stances where DEA or the Coast Guard does not have the equipment to respond to an emergency drug investigation.

The CHAIRMAN. The time of the gentleman from Arkansas (Mr. BETHUNE) has expired.

Mr. HUGHES. I yield 30 additional seconds to the gentleman.

Would the gentleman yield further?

Mr. BETHUNE. I yield to the gentleman from New Jersey.

Mr. HUGHES. Insofar as priorities, that is determined by the Secretary of Defense. In fact, the Secretary of Defense by regulation promulgates rules under which this equipment will be offered. So I believe that is a response to the gentleman's concern. We share his concerns. The reason the bill is drafted as it is is because we have tried to maintain that delicate balance and provide for its need.

Mr. BETHUNE. I thank the gentleman for the explanation. I am still concerned that we have a situation where we are authorizing the military to do everything except the technicality of arrest or the technicality of search and seizure. That is a pretty fine distinction.

Mr. SAWYER. Mr. Chairman, I yield 6 minutes to the gentleman from Florida (Mr. SHAW).

Mr. SHAW. Mr. Chairman, I think some points have been raised in this House this afternoon that perhaps we should dwell on for a few moments. I think that the last point the gentleman from Arkansas (Mr. BETHUNE) was making is a distinction on which we are, if the gentleman from New Jersey's amendment is the one that is ultimately passed, going to come back with additional hearings. I would like to compliment the gentleman from New Jersey (Mr. HUGHES) and the gentleman from my home State of Florida (Mr. BENNETT) for doing an excellent job in bringing something to this floor that is long overdue. That is, exactly what type of commitment is this country going to have to the eradication of the drug business in this country?

We have today in Florida alone a \$7 billion industry that is out of control and is illegally bringing drugs into my own home State of Florida at will. Yet we are tying the hands of the U.S. Government behind its back in saying that the sophisticated equipment and personnel cannot be used in that war. I would parallel this with a city that had the finest fire department and refused to call them out in time of a fire.

The question has been raised as to putting more money into the DEA with regard to this particular problem, but there is so much money out there that is being made on illegal drugs that we need a total commitment by this country. I personally favor a greater involvement with regard to the personnel and involving such things as allowing search and seizure and allowing arrest outside of the territorial United States.

But I do know that we are going against the policy that has been long standing in this country—and I can well understand and support a good slow policy in terms of posse comitatus and the eradication of the provisions that have been on the books for so long.

I am also confident that if the bill passes that would prohibit such involvement by the military personnel, it is going to be the subject of additional discussion and additional hearings.

So based upon that, I could gladly support, vigorously support, either one of the amendments we have.

The question of States' rights came up early in the discussion. The gentleman from Michigan brought it up, and I can understand the concern that somehow this matter seems to be somewhat inconsistent with States' rights. But I can tell you, as someone who is very much in favor of allowing those States to do for themselves what they can do, as a three-term mayor of the city of Fort Lauderdale, Fla., that local government and State government are totally—totally—unable to handle this problem, and they have not been able to make any dents in it.

I know also that the whole city of Detroit, Mich.—and personally I am acquainted with Coleman Young—has these problems, and that there are certain problems that need a Federal commitment.

So I would urge the passage of either one of these amendments. It is time that we do face the problem, do face the situation with which our country is faced.

I commend both the gentleman from Florida (Mr. BENNETT) and the gentleman from New Jersey (Mr. HUGHES) for two excellent amendments, one of which I think from listening to the debate today is certainly going to pass. I can tell you that I hope this is the first step only in a long line of legislation that this Government is going to pass and which has got to be passed if we are going to win the fight against the rising drug problems here in this country.

Ms. FIEDLER. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from California.

Ms. FIEDLER. I thank the gentleman for yielding. I am in support of some of the statements he has just made, and I think he has hit the nail on the head as far as concentrating on the issue of trying to eradicate the drug smuggling going on.

I would like to share a few facts with the Members. One is that we have 3 to 4 tons of heroin smuggled into this country every year worth about \$9 billion. Out of that, only 300 pounds were taken by law-enforcement agents last year.

In the area of cocaine, we have 25 to 30 tons that come in—around \$19 to \$25 billion worth. Only 1,300 pounds

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have been taken, and so on the list goes. So in terms of law enforcement, we are working hard, but we are nowhere nearly as effective as we need to be. I wholeheartedly agree with the gentleman. We need to do everything we can and use every resource we have. It does not mean we have to violate anybody's rights, but we must utilize the resources we have to accomplish the end of this kind of crime, which I might add is primarily affecting the youth of this Nation.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, I want to associate myself with the remarks of the gentleman from Florida (Mr. SHAW). Our Select Committee on Narcotics has been continually trying to find effective methods for stemming the flow of illicit drugs into our country and in doing so is confronted with the overwhelming problems arising out of the difficult task of patrolling our vast coastlines and our extensive Mexican and Canadian borders. Our border and shoreline enforcement efforts lack adequate manpower, equipment and the funds needed to effectively interdict the drug traffickers.

Our Coast Guard fleet, which is called upon to patrol the waters of the Caribbean and the Gulf of Mexico and our Pacific and Atlantic shores, does not have sufficient resources to properly fulfill this responsibility. The Navy could and should be utilized to assist the Coast Guard in its efforts to interdict the drug traffickers.

We have a vast resource of military aircraft and vessels that could be effectively utilized to help intercept the illicit flow of drugs.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SAWYER. I yield 1 additional minute to the gentleman from Florida (Mr. SHAW).

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Mr. GILMAN. Mr. Chairman, if the gentleman will yield further, within our military there are available resources or equipment and manpower which should be used to assist our law enforcement efforts. It is for these reasons that I endorse the Judiciary Committee's amendment and I urge my colleagues to support that proposal which is a balanced measure that will help us effectively fight the battle against drugs, a battle that needs a great deal more attention and assistance.

This amendment will provide the kind of additional help that is so sorely needed by relaxing the provisions of the 100-year-old Posse Comitatus Act, which has limited the use of the military in civilian law enforce-

ment efforts. The Judiciary Committee's version of this proposal provides for assistance by the military by utilizing military intelligence, equipment and manpower but does so without any division of the military's assigned mission of defense of our Nation.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

Mr. Chairman, I understand the concern of the gentleman, particularly since the gentleman represents a district in the State of Florida where this has been a real problem, and the gentleman serves on the committee.

I do not see this, necessarily, as a due process issue or the technicalities of an investigation.

The thing that concerns me here, of all that I have heard said, is the question of unbridled authority being delegated to the military, with no parameters on the extent to which they can be involved in civilian activities.

I have not heard much discussion about that, and yet we are getting ready to make an encroachment on a law of some 100 years standing.

The CHAIRMAN. The time of the gentleman from Florida (Mr. SHAW) has again expired.

Mr. SAWYER. Mr. Chairman, I yield 1 additional minute to the gentleman from Florida (Mr. SHAW).

Will the gentleman yield to me?

Mr. SHAW. I yield to the gentleman from Michigan.

Mr. SAWYER. Mr. Chairman, I may just say that we have given a lot of thought to that. In fact, the gentleman from New Jersey (Mr. HUGHES) and myself went down and held hearings in Florida on the problem. We are not giving unbridled authority to the military whatever. They can only act when requested by civilian law enforcement authorities. Then they can only act within the parameters of this act, namely, only in personnel, only providing equipment as requested, but then can only do so under the further limitations that are adopted in regulation form by the Secretary of Defense.

So they cannot just decide, as the gentleman suggested, to put a Marine division into Florida. They have got to only act when they are requested for assistance from a law enforcement agency, and then only within the parameters (a) of this act, which limits participation of personnel to the operation and maintenance of equipment; and (b) within such further refinements as the regulations issued by the Secretary of Defense further impose.

The CHAIRMAN. The time of the gentleman from Florida (Mr. SHAW) has again expired.

Mr. BENNETT. Mr. Chairman, will the gentleman yield 30 seconds to me?

Mr. SAWYER. I yield 30 seconds to the gentleman from Florida (Mr. BENNETT).

Mr. BENNETT. Mr. Chairman, I would just like to say that that is also true of the provision which I wrote in the Armed Services Committee; in other words, the ultimate control lies with civilians right on in the measure which came from the Armed Services Committee, as well as the Judiciary Committee.

The basic difference between the two, really, is the fact that a military person cannot make an arrest under their provision, and he could make an arrest under my provision; otherwise, the civilian control is always there with the whole thing in both cases.

The CHAIRMAN. The gentleman from New Jersey (Mr. HUGHES) has 1 minute remaining, and the gentleman from Michigan (Mr. SAWYER) has 4½ minutes remaining.

Mr. HUGHES. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, my concerns turn on the whole question of mixing the responsibilities and the role of the military government with the other very important role of prosecuting drug smugglers and criminals.

And it seems to me that under this bill dealing with a \$200 billion operation, to now be allocating some portion of it to fight crime is probably inadvertently moving into the biggest miscarriage and misunderstanding of the role of the Defense Department and the role of the Federal and local criminal justice system that one can possibly imagine.

I think that it needs to be examined very, very carefully.

Now, unexplainably, there is nobody here supporting States rights anymore. I want to explain to my colleagues that I did not mean that in the pejorative sense. The States and their governments have certain powers under the Constitution.

Mr. HUGHES. Mr. Chairman, will the gentleman from Michigan (Mr. SAWYER) yield 1 minute to me?

Mr. SAWYER. Yes, I will yield 1 minute to the gentleman from New Jersey.

Mr. HUGHES. I thank the gentleman for yielding.

Mr. Chairman, just in response to my colleague, the gentleman from Michigan, under the provisions of the bill any loaning of equipment or any loaning of personnel is reimbursable. It does not come out of the Department of Defense budget. We are not asking the Defense Department to use their amounts set aside for the military mission for law enforcement purposes.

All we are doing is, we are trying, first of all, to codify the existing practices relative to the sharing of intelligence, the sharing of base facilities, the sharing of research, and we have taken it one step further; they need

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equipment from time to time, but it is an empty gesture when you offer equipment and do not offer the manpower to operate the very sophisticated equipment, pure and simple, under strict guidelines.

I would urge my colleagues to support the Judiciary Committee version of the bill, a version that I would submit has been very well crafted, and I think it maintains a very delicate balance between the military and the civilian role in our society.

Mr. SAWYER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I may say, on this States rights bit, this has nothing whatever to do with States rights. It is a Federal obligation to protect the shores of the United States from incoming either illegal contraband of any kind or enemies of any variety.

As a matter of fact, the State of Florida, down at our hearings there, very generally took the position, "My gosh, this whole mess we are in is a Federal problem. It is between your immigration policy, letting all of the Mirabel people come in, the Haitians come in; you are not protecting the coastline, the Coast Guard does not have equipment to do it; and the drug problem, in addition. You are not protecting our shores. You have 200 abandoned airfields here in the State that are accessible, we have 8,000 miles, or whatever it is, of coastline, and this is clearly a Federal problem."

It strikes me that it in no way is an intrusion on States rights, and particularly with the amendment that is going to be offered by the gentleman from Florida.

The CHAIRMAN pro tempore (Mr. WEISS). The gentleman from Michigan (Mr. SAWYER) has 2½ minutes remaining.

Mr. SAWYER. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Chairman, I rise in support of Mr. BENNETT's position.

Mr. Chairman, there has been some concern expressed over the proposed mixing of the civilian and the military functions in stemming the international drug trade, and I think that the point that Congressman SHAW and the other gentleman from Florida made should be well taken, in that we are confronted by what is essentially a military operation being carried on by international drug traders. In my estimation—and I represent a San Diego district, which encompasses one of the large areas of traffic—a great deal of our incoming drugs are transported by air traffic.

In our situation in San Diego the loaning of the surveilling capacity by the military to the domestic sector would be a substantial step toward stemming the drug trade. But I think that in the areas where the trade is manifested in vessels, in ships, that we are not going to be able to effectively stop the trade unless the same people that surveil the incoming ships have

the right to seize them. For that reason, I feel that the Committee's language is superior.

Mr. SEIBERLING. Mr. Chairman, I rise in support of the Judiciary Committee amendment, and of the amendment which will be offered by the gentleman from Texas (Mr. WHITE).

I commend the gentleman from Florida (Mr. BENNETT) for his efforts to stem the dangerous flow of drugs into this country. I certainly share his concern. Nevertheless, I think that authorizing the use of military personnel in seizures and arrest in situations involving drug law violations would be a serious mistake.

For several years after the 1970 tragedy at Kent State University, which is in my congressional district, I attempted to draft legislation to deal with the use of the military in enforcing civilian law. While involved in that effort, I became acutely aware of the complexities and great difficulties that arise when military forces are used in civilian law enforcement.

This country operates under the longstanding principle that the military's chief role in civilian law enforcement is as a backup or emergency force. I think the Judiciary Committee's language limiting the use of military personnel to assistance in the operation and maintenance of military equipment is much more in keeping with this important tradition of civil-military separation.

The Judiciary Committee amendment permits the assistance necessary to help stem the growing traffic in drugs across our borders. The addition of the language to be offered by Representative WHITE further reduces the risks that exist when the military becomes involved in enforcing domestic law within our own borders. As the general counsel to the Department of Defense explained in a letter to Representative HUGHES:

Because the likelihood of confrontation with the United States citizens is greatest within the United States, the legislation should make it clear that such direct participation is authorized only on an extraterritorial basis.

Mr. Chairman, the Los Angeles Times recently printed an article written by David Landau who is legislative counsel to the American Civil Liberties Union in Washington. I have inserted the article, entitled "Will Military Invade Law Enforcement?" in the Extensions of Remarks. In the article, Mr. Landau points out some of the dangers involved in using the military to enforce civilian law. I urge my colleagues to read this article and to support the Judiciary Committee amendment and the White amendment.

Mr. CONYERS. Mr. Chairman, if the gentleman from Michigan will yield, I would appreciate it.

Mr. SAWYER. Mr. Chairman, I yield 1 minute to the gentleman from Michigan.

Mr. CONYERS. I thank my colleague, the gentleman from Michigan, for yielding.

Mr. Chairman, as I see it, there are three dimensions to this problem. One is the State law enforcement consideration; the other is the Federal consideration of Customs, Immigration, Treasury, the FBI, who already have a Federal presence and have a Federal responsibility, as my colleague, the gentleman from Michigan, has indicated; and now what we are introducing is the military.

Now, it would seem to me that we might more ably approach the problem of drug fighting by building up the Federal resources, of which there are at least half a dozen Federal resources, of which there are at least half a dozen Federal agencies already committed to this job.

It is going to raise a very interesting question about how much money in the military budget is going to go to drug fighting. This is a brandnew question among about 100 other questions in the Defense budget that I think is going to confuse it horribly.

Mr. SAWYER. Mr. Chairman, I yield myself the remaining one-half minute.

Mr. Chairman, I may say that the law enforcement agency requesting the military equipment is chargeable for the use of that equipment. It is no additional economic burden on the Defense Department whatever, but passed right on where it should be under the bill, namely, the law enforcement agency requesting the use of either the equipment or the personnel to operate it.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN pro tempore. The time of the gentleman from Michigan (Mr. SAWYER) has expired.

Mr. PRICE. Mr. Chairman, I yield 15 minutes to the gentleman from Virginia (Mr. DAN DANIEL), to explain the position of the Armed Services Committee on multiyear procurement.

(Mr. DAN DANIEL asked and was given permission to revise and extend his remarks.)

Mr. DAN DANIEL. Mr. Chairman, when the House recessed on June 24, Members will recall we were in the midst of debating the merits of section 909 of the bill, and the Government Operations Committee's substitute.

The essential difference between the two was this: Section 909 will provide legislative authority for the Department of Defense to enter into contracts of more than 1 year's duration, providing the contracts met strict criteria, and subject to Armed Services Committee oversight and the annual appropriations process. The substitute would further restrict DOD by requiring pilot projects and congressional approval for each multiyear contract.

Do we need pilot projects in order to prove the worth of multiyear contract-